

BAKER & HOSTETLER LLP

Thomas A. Canova (TC 7270)
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Deborah A. Wilcox (Ohio Bar No. 0038770)
3200 National City Center
1900 East 9th Street
Cleveland, OH 44114
Telephone: (216) 621-0200
Facsimile: (216) 696-0740

Attorneys for Plaintiff
pediped Infant Footwear LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEDIPED INFANT FOOTWEAR LLC,

Plaintiff,

v.

KUDOS LEATHERGOODS LTD d/b/a JACK
AND LILY and ROBERT THOMAS BUELL,
Individually,

Defendants.

CASE NO. 08-CIV-3572 (LTS)

DECLARATION OF NANCY M. GIROUARD

I, Nancy M. Girouard, declare as follows:

1. I am employed by Military Advantage Inc., which operates the Web site Military.com. This Declaration is based upon my personal knowledge, and if called as a witness, I would testify competently to the facts set forth herein.

2. In mid-June 2008—at the request of Rudy Glocker, Chief Operating Officer of pediped Infant Footwear LLC—I called the company Jack and Lily to request a catalog. I reached Jack and Lily’s voicemail system and left a message. My message indicated that I was interested in Jack and Lily’s products and wanted to receive a catalog. I also left my mailing address.

3. Roughly three to five days after leaving the voicemail message for Jack and Lily, I received an envelope in the mail from Jack and Lily. I did not open the envelope but instead mailed it directly to Mr. Glocker.

4. On June 23, 2008, Mr. Glocker requested that I try to order eight pairs of shoes in particular styles and sizes from Jack and Lily.

5. On June 25, 2008, I sent an order by email to Jack and Lily, which is included in the email chain attached hereto as Exhibit 1. I indicated that I wished to order eight pairs of shoes in the following styles and sizes: pink and brown saddle shoe (SKU no. 1113) in sizes 6-12 months and 12-18 months, pink and chocolate saddle shoe (SKU no. 181) in sizes 6-12 months and 12-18 months, black and white saddle shoe (SKU no. 1115) in sizes 6-12 months and 12-18 months, and black and white saddle shoe (SKU no. 182) in sizes 6-12 months and 12-18 months.

6. On July 12, 2008, not having heard back from Jack and Lily regarding my order, I sent a follow-up email inquiring as to the status of my order. *See* Exhibit 1.

7. On July 15, 2008, I received a reply email from Rob Buell at Jack and Lily. *See* Exhibit 1. He indicated that they had been missing a few pairs from my order but had received everything at the end of the previous week. He further indicated that my order was shipped on July 14, 2008, and that I should receive it in the coming week.

8. On July 23, 2008, I received a package from Jack and Lily. I recorded the opening of the package from Jack and Lily on video, and the video is in my custody.

9. The package contained the styles and sizes of shoes that I had ordered. I compared the shoes that I received to those pictured in Exhibit 2 hereto. On Exhibit 2, I have indicated two styles of shoes that closely correspond to four of the pairs that I received. I had ordered two pairs in each of style numbers 181 and 182. These numbers match the numbers for the shoes that I have marked on Exhibit 2.

10. The shoes that I have marked on Exhibit 2 may differ from those that I received in some small details. For one, the straps of the black and white saddle shoes pictured in Exhibit 2 appear not to be scalloped, while the straps of the black and white saddle shoes that I received are scalloped. For another, tags are not visible next to the straps on the shoes that I have marked on Exhibit 2, while the shoes that I received do have tags next to the straps.

11. The four pairs of shoes that closely correspond to the styles that I have marked on Exhibit 2 came in the type of box pictured in Exhibit 3 hereto.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed at 5:08 pm San Francisco, California, this 24th day of July, 2008.


Nancy M. Girouard

Exhibit 1

REDACTED

----- Forwarded Message: -----

From: "Nancy Girouard" <nancy.girouard@gmail.com>

To: "Rudy Glocker" <rudyglocker@comcast.net>

Subject: Fwd: order

Date: Tue, 15 Jul 2008 21:50:29 +0000

> Looks like you owe me a trip to NY or Vegas. :)

> *just kidding* well....it IS my birthday.

>

> I'll let you know when I get the package.

> Should I video opening the box or just ship it to you (covered in paper as
> to preserve the original shipping information)

> N

>

> ----- Forwarded message -----

> From: Nancy Girouard <nancy.girouard@gmail.com>

> Date: Tue, Jul 15, 2008 at 2:49 PM

> Subject: Re: order

> To: "Info @ Jack & Lily" <info@jackandlily.com>

>

>

> OH gotcha. Thanks!

> Looking forward to it.

> N

>

>

> On Tue, Jul 15, 2008 at 2:47 PM, Info @ Jack & Lily <info@jackandlily.com>
> wrote:

>

> > Your complete order was shipped (8 pair)...we held the order until the
> > remaining few pair arrived.

> >

> >

> >

> >

> >


> > Best regards,

> >

> >

> >

> >
> >
> > Rob Buell
> >
> > tel. 604.254.6900
> >
> > email: info@jackandlily.com
> >
> > website: www.jackandlily.com
> >
> >
> >
> > * *
> >
> > *Voted **#1** Baby / Kids Brand in Canada by retailers within North
> > America*
> >
> > *2007 Earnshaw's magazine (Earnie Awards)*
> >
> >
> >
> > -----
> >
> > *From:* Nancy Girouard [mailto:nancy.girouard@gmail.com]
> > *Sent:* Tuesday, July 15, 2008 2:42 PM
> > *To:* Info @ Jack & Lily
> > *Subject:* Re: order
> >
> >
> >
> > I need the complete order....which ones are missing?
> > These are for display that I've already built.
> > N
> >
> > On Tue, Jul 15, 2008 at 2:38 PM, Info @ Jack & Lily <info@jackandlily.com>
> > wrote:
> >
> > Hi Nancy,
> >
> >
> >
> > I am very sorry for the late reply but we have been having problems with
> > our email. We were missing a few pairs from your order but received
> > everything at the end of last week. Your order was shipped yesterday and
> > you should receive it next week. Please let me know if you have any
> > questions.
> >
> >
> >
> >
> > Best regards,
> >
> >
> >
> >
> > Rob Buell
> >
> > tel. 604.254.6900
> >
> > email: info@jackandlily.com
> >
> > website: www.jackandlily.com
> >
> >
> >

> >
> > * *
> >
> > *Voted **#1** Baby / Kids Brand in Canada by retailers within North
> > America*
> >
> > *2007 Earnshaw's magazine (Earnie Awards)*
> >
> >
> >
> > -----
> >
> > *From:* Nancy Girouard [mailto:nancy.girouard@gmail.com]
> > *Sent:* Saturday, July 12, 2008 2:35 PM
> > *To:* info@jackandlily.com
> > *Subject:* Re: order
> >
> >
> >
> > Hello
> >
> > Eagerly waiting for my order....please advise. :)
> > Nancy
> >
> > On Wed, Jun 25, 2008 at 8:35 AM, Nancy Girouard <nancy.girouard@gmail.com>
> > wrote:
> >
> > Hello Rob
> >
> > Thanks for the catalog! I'd like to go ahead and order 8 pairs of shoes.
> > I'm putting together themed gift baskets and I think your shoes are
> > darling!
> >
> > Here are the sku's and sizes.
> > Pink and Brown Saddle shoe -- SKU number 1113 in sizes 6-12 & 12-18
> > Pink and Chocolate Saddle shoe -- SKU number 181 in sizes 6-12 & 12-18
> > Black and White saddle shoe -- SKU number 1115 in sizes 6-12 & 12-18
> > Black and white saddle shoe -- SKU number 182 in sizes 6-12 & 12-18
> >
> > BTW, I'm a Canadian myself...well from Quebec, you know those French
> > speaking ones. :) Celebrated the St. Jean Baptiste yesterday with a couple
> > other Canadians here in San Francisco.
> >
> > Oh just in case you don't have my address still
> > 7 Commodore Dr A551
> > Emeryville CA 94608
> >
> > And Visa
> >  REDACTED
> >
> > Billing address same as above.
> > Nancy M Girouard (name on card)
> >
> > I've got a big event coming up so let me know how fast they will ship.
> >
> > Thanks again!
> >
> > --
> > Special Agent Nancy
> >
> >
> >
> >
> > --

> > Special Agent Nancy
> >
> >
> >
> >
> > --
> > Special Agent Nancy
> >
>
>
>
> --
> Special Agent Nancy
>
>
>
> --
> Special Agent Nancy
>

Exhibit 2

[THE COLLECTION](#)[ABOUT JACK AND LILY](#)[STORE LOCATOR](#)[CONTACT US](#)[Shopping Bag](#) [Customer Service](#) [Size Chart](#)[Back to Homepage](#)

NEW 'MY SHOES' *by* JACK AND LILY

FEATURING OUR EXCLUSIVE RUBBER SOLE PADS. AVAILABLE APRIL 20TH, 2008



Daisy patch / pink (171)



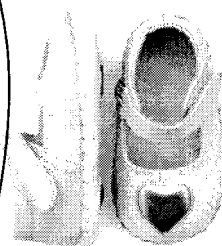
Daisy patch / mint (172)



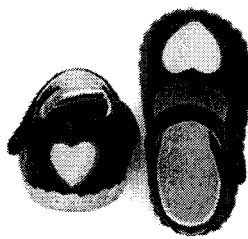
Saddle shoe / pink & chocolate (181)



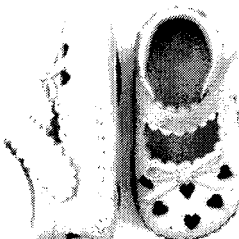
Saddle shoe / black & white (182)



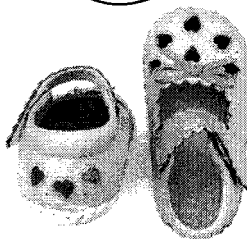
Heart / pink (182)



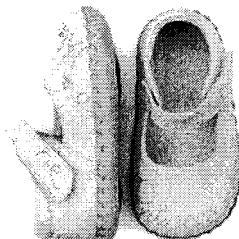
Heart / chocolate (181)



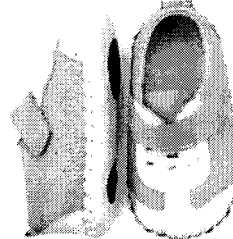
Sandal / white (412)



Sandal / pink (411)



Princess / mint (131)



Sport / pink (303)



Love hearts / pink (261)



Hibiscus / navy (142)



Love / chocolate (111)



Lovebirds / chocolate (151)



Solid / navy (251)



Solid / chocolate (252)



Anchor / white & light blue (221)



Anchor / navy & light blue (222)



Prince / chocolate (243)



Prince / light blue (241)



Sport / navy & white (301)



Sport / white & green (302)



Sandal / chocolate (402)



Sandal / navy (401)



Skull / black (201)

[Catalogue Request](#) [Shipping](#) [Return Policy](#)
[Email Sign Up](#) [Tell a Friend](#)

©2006 Jack and Lily. All Rights Reserved. Soft-soled leather baby shoes, fashionable toddler shoes and ultra-soft infant shoes.

[Privacy](#) [Terms of Use](#)

Exhibit 3

PLAINTIFF'S
EXHIBIT
2A

JACK ^a_n LILLY

MY SHOES

6-12
months



discover: touch. smile



A true soft-sole shoe that can be used both *indoor and outdoor*, 'My Shoes' by Jack and Lily™ are perfect for any occasion and all seasons. Medical experts love them because, unlike hard sole shoes, our soft soles allow baby's feet to *flex naturally* while developing strength and balance. Handmade from high- quality *non-toxic leather*, 'My Shoes' feature *suede lining*, cushioned *skid resistant* leather-rubber soles and *padded ankles* for extra protection and comfort. And with a simple Velcro closure, putting on a stylish pair of 'My Shoes' is easy for both parents and toddlers.

Discover 'My Shoes' by Jack and Lily™.

Jack and Lily is committed to the development of high quality baby footwear. Our company is proud to provide ultra-soft, fashionable shoes and boots for babies and toddlers.

discover. touch. smile

www.jackandlily.com



181-PK x-small
Saddle pink

0-6
months